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No. 84-451 (2)

In the Supreme Court of the United States

OCTOBER TERM, 1984

JEFFERSON COUNTY COMMUNITY CENTER FOR DEVELOPMENTAL DISABILITIES, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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11pp

QUESTION PRESENTED

substantial evidence supports the Board's juris-
ndings that petitioner is not a "political subdivi-
tate and that it has sufficient control over its
ons to enable it to bargain effectively with the
esenting its professional employees.

Opinions below
Jurisdiction ...
Statutes involve
Statement ....
Argument ....
Conclusion ...

Cases:

Natchez Tr
193 N.L.
1042 ...
NLRB v. *I*
Hawkins
Universal C
340 U.S.

Statute:

National La
151 *et seq*
§ 2(2),
§ 8(a),
§ 8(a)(
§ 8(a)(
§ 10(a)

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OF AUTHORITIES

tric Power Association,
98, enforced, 476 F.2d
. 5
Gas Utility District of
, 402 U.S. 600 5
Corp. v. *NLRB*,
. 5

lations Act, 29 U.S.C.

C. 152(2) 2, 5
C. 158(a) 5
.S.C. 158(a)(1) 2, 4
.S.C. 158(a)(5) 2, 4
.C. 160(a) 5

In the Supre

JEFFERSON C
DEVELOPMENT

NATION

ON PETITION
THE UNITED

BRIEF FOR TH
BO

The opinion of th
reported at 732 F.2
National Labor Re
E11) are reported a
No. 32. The Region
election in the unde
App. B1-B18) is un

The judgment of t
14, 1984, and a peti
25, 1984. The petiti
September 21, 198
invoked under 28 U

urt of the United States

R TERM, 1984

. 84-451

COMMUNITY CENTER FOR
ABILITIES, INC., PETITIONER

v.

R RELATIONS BOARD

WRIT OF CERTIORARI TO
COURT OF APPEALS FOR
TH CIRCUIT

ONAL LABOR RELATIONS
OPPOSITION

NS BELOW

of appeals (Pet. App. A1-A9) is
The decisions and orders of the
Board (Pet. App. D1-D10, E1-
.L.R.B. 186 and 263 N.L.R.B.
ctor's decision and direction of
epresentation proceeding (Pet.
.

DICTION

of appeals was entered on May
rehearing was denied on June
writ of certiorari was filed on
jurisdiction of this Court is
54(1).

(1)

OLVED

1) of the National Labor
nd 158(a)(5) and (1), are
on.

IT

nty Community Center
nc. (the Center) is a non-
ge of services, including
heltered workshops and
y retarded and seriously
ily in a "catchment area"
App. A2, B4). The Center
nder general Colorado
nbers include all persons
ment area, employees of
ns within the catchment
he Center's clients, and
s." *Id.* at A2, A6 n.4, B4.
a board of directors to
. The board of directors
ectors are elected by the
n are appointed by enu-
agencies with the con-
appointed by a private,
nization, the Jefferson
Citizens. The appointed
ority vote of the Board.

of Directors, hires and
sets salary schedules. It
nd benefits policies and
n, sick, and other leave,
sability and retirement
The Center participates

in the Federal Secur
are not covered by Colorad
ment Act. Pet. App. A8, B7

To finance its activities, th
state and local government
by state legislation to purcha
tally disabled from commu
receives federal grants, fees
tions. Pet. App. A8, B4-B5,
have contracts with the Cen
such as staff licensing requi
eligibility restrictions, and
and monitor the Center's p
with standards (*id.* at A8, B6
do not hire, fire, or discipline
lish salary levels, fringe bene
tions of employment, or othe
Center's personnel policies (

b. On February 1, 1980, t
sional Employees Associatio
the Board for a representatio
professional and technical e
Center opposed the petition
that it was outside the Board
political subdivision of the S
government agencies "contro
evidentiary hearing on the p
Director directed that an ele
He concluded that the Cente
subdivision of a state becaus
the state or administered by i
lic officials or the general ele
cient control over the employ
ees to enable it to engage in
labor organization (*id.* at B

ram and its employees
lic Employees' Retire-

contracts with various
, which are authorized
es for the developmen-
ters. The Center also
ving clients, and dona-
ernment agencies that
andards for client care
program content and
plant specifications,
to assure compliance
e government agencies
ter's employees, estab-
ther terms and condi-
ect themselves into the
, B7).

nunity Center Profes-
ssociation) petitioned
on among the Center's
s (Pet. App. A2). The
among other things,
ction because it was a
Colorado and because
Center. Following an
the Board's Regional
held (*id.* at B1-B18).
constitute a political
ot created directly by
ls responsible to pub-
and that it had suffi-
ditions of its employ-
ful bargaining with a
he Board denied the

nal Director's deci-

vas set aside by the
a majority of the
f representation by
ed to professional
tified the Associa-
llective bargaining

tion requested the
tively over the unit
s and conditions of
ested certain infor-
rgaining represen-
th the Association
mation. Pet. App.

proceedings, the
tion 8(a)(5) and (1)
1), by refusing to
ish relevant infor-
. App. D7-D8, E7,
bargain with the
vith the requested
etitions for review
l in the court of

rd's decisions and
he court, applying
vith the Board that
n of a state since it
e of Colorado as a
vernment and was
re responsible to

public officials or to the genera
addition, the court noted th
attributes commonly associate
including the powers of taxatio
and bond issuance (*id.* at A7). T
the Board's finding that the Ce
trol over the employment rela
ingful collective bargaining, p
cession before the court that it
authority over the essential tern
ment" (*id.* at A7-A8).

ARGUM

Section 2(2) of the Act, 29 U
State or political subdivision th
an "employer" subject to the ju
also Sections 8(a) and 10(a) of
160(a). The term "political subd
Act or its legislative history; ho
mining whether an employer fa
applied a two-part test: (1) w
"created directly by the state s
ment or administrative arm o
whether the employer "is admi
are responsible to public officia
Natchez Trace Electric Power
1098 (1971), enforced, 476 F.2c
NLRB v. *Natural Gas Utility D*
402 U.S. 600, 604-605 (1971).

The Center does not dispute
Board's test, which the Board a
the Center asserts only that it qu
vision" under either part of this
tention does not warrant revie
Camera Corp. v. *NLRB*, 340 U

orate (*id.* at A3-A6). In
e Center lacked other
n political subdivisions,
poena, eminent domain
urt further agreed with
retained sufficient con-
hip to engage in mean-
g to the Center's con-
final decision-making
l conditions of employ-

152(2), excludes "any
" from the definition of
tion of the Board. See
Act, 29 U.S.C. 158(a),
n" is not defined in the
r, the Board, in deter-
hin the definition, has
er the employer was
o constitute a depart-
government," or (2)
ed by individuals who
o the general public."
ciation, 193 N.L.R.B.
2 (5th Cir. 1973). See
t of Hawkins County,

ppropriateness of the
l in this case. Rather,
s as a "political subdi-
That factbound con-
this Court. *Universal*
74, 490-491 (1951).

As petitioner points out (Pet. 12; see Pet. App. I1-I8, J1), the Board currently has pending before it a case involving the status as a "political subdivision" of another Colorado community center. However, contrary to petitioner's contention (Pet. 12), the pendency of that case does not require that this case be remanded to the Board. Whether the Board will modify the test applied in this case or evaluate the relevant facts differently than it did here cannot yet be determined. Should the Board ultimately hand down a decision in the pending case that is inconsistent with its decision in this case, the Center would be free to seek reconsideration before the Board of the jurisdictional finding here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 1984

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